Print Form

IN THE SUPREME COURT OF THE STATE OF ALASKA

DOCKETING STATEMENT A
For Use in Appeals Under Appellate Rule 204 and 218

(for court system use)

No. _____

INSTRUCTIONS FOR MULTIPLE PARTIES OR ATTORNEYS: If there are multiple parties or attorneys, repeat the appropriate box. This may be done on a separate page. Please clearly indicate which attorney represents which party.

1. TYPE OF APPEAL

a. ☒ General Civil Rule Appeal (App. Rule 204)	b. ☐ Appeal in Child Custody Case (App. Rule 218)

2. PARTY FILING APPEAL (Appellant)

a. Name: Kevin Meyer and Alaska Division of Elections	b. Status in the Trial Court: ☐ Plaintiff ☒ Defendant ☐ Other. Specify: _____
c. Party Mailing Address (not attorney's address): (see attached)	
City / State / Zip Code	d. Telephone: (see attached)

3. APPELLANT'S ATTORNEY

a. Name: Jessica M. Alloway		b. Bar Number: 1205045
c. Attorney Mailing Address: 1031 W. 4th Avenue, Suite 200		d. Telephone: 907-269-5275 / e. Fax: 907-276-3697
City: Anchorage	State: AK / Zip Code: 99501	f. Firm/Agency: Alaska Department of Law

4. PARTY APPEALED AGAINST (Appellee)

[All parties in the trial court when the final order/judgment were entered are appellees and must be listed if they did not file a notice of appeal. AR 204(b)[1] & (g).]

a. Name: Vote Yes for Alaska's Fair Share	b. Status in the Trial Court: ☐ Plaintiff ☐ Defendant ☐ Other. Specify: _____
c. Party Mailing Address: C/O Robin O. Brena, Jon S. Wakeland, 810 N. St., Ste 100	
City: Anchorage / State: AK / Zip Code: 99501	d. Telephone: 907-258-2000

5. APPELLEE'S ATTORNEY

a. Name: Robin O. Brena & Jon S. Wakeland		b. Bar Number: 8410089 & 0911066
c. Attorney Mailing Address: 810 N. Street, Suite 100		d. Telephone: 907-258-2000 / e. Fax:
City: Anchorage	State: AK / Zip Code: 99501	f. Firm/Agency: Brena, Bell & Walker, P.C.

6. SUPERIOR COURT PROCEEDING

a. Case No.	b. Superior Court Judge	c. Date Judgment Distributed
3AN-19-11106 CI	The Honorable William F. Morse	June 26, 2020

d. Post-Judgment Motions: List all post-judgment motions that affect time for filing appeal. See Appellate Rule 204(a)(3).

DATE OF FILING				DATE ORDER DISTRIBUTED		
Month	Day	Year	Type of Post-Judgment Motion	Month	Day	Year

7. CONSTITUTIONAL ISSUES

Is the constitutionality of a state statute or regulation at issue in this appeal? ☐ Yes ☒ No

If yes, cite statute or regulation: _____

8. FINALITY OF JUDGMENT OR ORDER BEING APPEALED

a. ☐ The judgment or order being appealed is final and disposes of **ALL** claims by **ALL** parties. (The judgment or order is final under City and Borough of Juneau v. Thiboudeau 595 P.2d 626 (AK 1979).)

b. ☐ The judgment or order being appealed does not dispose of all claims by all parties but is final under Civil Rule 54(b). (The trial court's Civil Rule 54(b) order must be attached.)

c. ☒ The judgment or order being appealed is not final. The authority for this appeal is Final judgment is forthcoming and appeal cannot wait as described in Unopposed Motion to Expedite

9. ATTACHMENTS

The following items are submitted with this form (except that cross-appellants need not submit item a.):

a. ☒ A copy of the final order or judgment from which the appeal is taken.

b. ☒ A statement of points on appeal.

c. ☐ A $250 filing fee or
- ☐ a motion to appeal at public expense (financial statement affidavit form must be included).
- ☐ a motion to waive filing fee (if basis for motion is inability to pay, financial statement affidavit form must be included).
- ☐ an application for exemption from filing fee under AS 9.19.010.
- ☒ no filing fee is required because appellant is
  - ☐ represented by court-appointed counsel, and AS 9.19.010 does not apply.
  - ☒ the state or an agency thereof.
  - ☐ an employee appealing denial of benefits under AS 23.20 (Employment Security Act)

d. A $750 cost bond or deposit or

☐ a copy of a superior court order approving appellant's supersedeas bond or a copy of appellant's motion to the superior court for approval of a supersedeas bond.

☐ a motion to waive cost bond (if basis for motion is inability to pay, financial statement affidavit form must be included).

☐ a motion to appeal at public expense (financial statement affidavit form must be included.)

☒ no cost bond is required because appellant is
- ☐ represented by court-appointed counsel.
- ☒ a state agency, municipality, or state or municipal officer.
- ☐ an employee appealing denial of compensation by Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act).

e. Designation of transcript ☐ submitted ☒ not submitted (no transcript being requested) ☐ motion to extend submitted

6/30/2020
Date

/s/ Jessica M. Alloway
Signature of Appellant or Appellant's Attorney

CERTIFICATE OF SERVICE

I certify that on _____ a copy of the notice of appeal, this docketing statement, and all attachments (except filing fee and cost bond) were

mailed	delivered	to **All Parties** (listed)
☐	☐	See Attached
☐	☐	
☐	☐	COS
☐	☐	
☐	☐	

Signature: _____

FILING INSTRUCTIONS

File original docketing statement and notice of appeal with all attachments listed in #9 and ONE copy of ALL except filing fee and cost bond.

ADDENDUM TO DOCKETING STATEMENT A

Addresses of appellants:

Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811
(907) 465-3520

State of Alaska, Division of Elections
P.O. Box 110017
Juneau, AK 99811
(907) 465-4611

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

VOTE YES FOR ALASKA'S FAIR SHARE, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-11106 CI

~~[PROPOSED]~~ ORDER DENYING DEFENDANTS' MOTION TO MAKE ADDITIONAL FINDINGS AND AMEND ORDER OR ALTERNATIVELY FOR CLARIFICATION

THIS COURT having considered the Defendants' Motion to Make Additional Findings or for Clarification dated June 12, 2020 ("Motion"), the Plaintiff's opposition, and any reply thereto, and being fully advised,

IT IS HEREBY ORDERED that Defendants' Motion is DENIED.

DATED this 26 day of June, 2020

William F. Morse
Judge of the Superior Court

JUN 18 2020

I certify that on 6.26.20 a copy of the following was mailed/emailed to each of the following at their addresses of record.

Administrative Assistant Brena Mills

BRENA, BELL & WALKER, P.C.
810 N STREET, SUITE 100
ANCHORAGE, AK 99501
PHONE: (907)258-2000
FAX: (907)258-2001

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

VOTE YES FOR ALASKA'S FAIR SHARE, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-11106CI

ORDER

Plaintiff's Motion for Summary Judgment
Defendants' Motion for Summary Judgment

Introduction.

Vote Yes for Alaska's Fair Share (Vote Yes) proposed an initiative to revamp certain aspects of the State's taxation scheme applicable to a defined set of oil producers. Lieutenant Governor Kevin Meyer prepared a summary of the initiative to be included with the petition for the initiative. Vote Yes filed a lawsuit objecting to three aspects of the petition summary. Meyer later concluded that Vote Yes had gathered sufficient signatures to place the initiative on the ballot. Meyer prepared a different summary of the initiative for the ballot. Vote Yes now only objects to one part of the ballot summary. Both parties have filed motions for summary judgment.

The Court finds that Vote Yes filed a timely objection to the ballot summary and that Meyer's description of the impact of section 7 of the initiative is not impartial. Thus a single sentence of the ballot summary should be stricken.

Chronology

Vote Yes filed its initiative petition on 19 August 2019. Pursuant to the authority given to the lieutenant governor by AS 15.25.010-15.45.220 Meyer certified the petition for circulation on 15 October 2019. He provided a summary of the initiative to be included with the petition. The Department of Law crafted that summary. On 14 November 2019 Vote Yes filed its complaint objecting to three aspects of the petition summary, including the description of the effect of section 7 of the initiative.[1] Nonetheless, Vote Yes circulated the petition and gathered signatures.

On 17 March 2020 Meyer certified that Vote Yes had gathered the requisite signatures and that the initiative could be placed on the ballot.[2] Meyer issued a ballot summary that differed somewhat from the petition summary, changing two assertions in the first summary that had prompted objections in the

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[1] Complaint (14 November 2019) at 10-11, ¶¶ 29-31 (objection to summary of section 7).

[2] Memorandum in Support of Plaintiff's Motion for Summary Judgment (Vote Yes Memo.) (1 May 2020), Exhibit D (Letter from Lt. Gov. Kevin Meyer to Robin O. Brena (17 March 2020)).

Vote Yes lawsuit. The ballot summary included a description of the initiative's section 7 that differed from the description in the petition summary.

In the pending litigation Vote Yes did not renew or amend its objection to address the new summary of section 7. Nor did it withdraw the initial objection. Instead it proceeded with the lawsuit it had already filed. On 20 April 2020, during a scheduling discussion, Vote Yes advised the assistant attorney general assigned to the litigation that it was going forward with its challenge to the ballot summary's description of section 7.[3]

Timeliness.

Meyer contends that Vote Yes did not make a timely objection to the new description of the effect of section 7 contained in the ballot summary and thus the complaint should be dismissed. Any person who is "aggrieved by a determination made by the lieutenant governor under AS 15.45.010-15.45.220 may bring an action in the superior court to have the determination reviewd[.]"[4] The action must be filed "within 30 days of the date on which notice of the determination was given."[5] Meyer argues that Vote Yes may not pursue its challenge to the ballot summary because it did not amend its complaint to include a challenge to the ballot summary. The existing lawsuit only challenged the

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3 Affidavit of Cori M. Mills (1 May 2020) at 2, ¶ 4.

4 AS 15.45.240.

5 *Id.*

petition summary. Meyer reasons that the earlier challenge could not apply to a ballot summary that did not exist when the complaint was filed. Furthermore, the ballot summary's description of section 7 differs from the description in the petition summary, thus Vote Yes might not necessarily object to the new description. Meyer argues that Vote Yes was obligated to assert an objection specific to the ballot summary within 30 days of its issuance and could not rely upon the pre- existing objection to the petition summary. Meyer points outs that the verbal confirmation, made on 20 April 2020, that Vote Yes was pursuing an objection to the ballot summary, was 3 days after the 30 day filing period had elapsed. As a result Meyer contends that Vote Yes should be barred from pursuing its objection in this litigation.

In order to evaluate Meyer's untimeliness argument it is necessary to review the substance of the relevant portions of the initiative, the two summaries of section 7, and the Vote Yes complaint. Did the Vote Yes complaint, although based upon the petition summary, give Meyer adequate notice of its objection to the description of section 7 in the subsequent ballot summary?

Section 1 of the initiative provides:

> The uncodified law of the State of Alaska is amended by adding a new section to read:
>
> SHORT TITLE. This Act shall be known as the "Fair Share Act."

Notwithstanding Any Other Statutory Provisions to the Contrary, the Oil and Gas Production Tax in AS 43.55 Shall be Amended As Follows:[6]

Section 7 of the initiative provides: "**Public Records**. All filings and supporting information provided by each producer to the Department relating to the calculation and payment of the taxes set forth in Sections 3 and 4 shall be a matter of public record."[7]

On 14 October 2019 the Department of Law issued a letter to Meyer describing what the initiative proposed to do and concluding that the application met the requirements for an initiative.[8] The letter also included what it described to be "a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our office's standard practice. Under AS 15.45.180 a ballot proposition must include a 'true and impartial summary of the proposed law.'"[9] On 15 October 2019 Meyer certified the initiative application and provided Vote Yes with a copy of the Department of Law letter.[10]

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6 Complaint, Exhibit A at 1.

7 Complaint, Exhibit A at 2.

8 Complaint (14 November 2019), Exhibit B (Letter from Assistant Attorney General Cori Mills to Lieutenant Governor Kevin Meyer (Mills Letter) (14 October 2019) at 11.

9 Mills Letter at 11.

10 Answer (10 February 2020) at 3, ¶ 12.

The Department of Law advised Meyer that section 7 of the initiative stated that filings to the Department of Revenue from producers subject to the new tax would be "a matter of public record."[11] The Department of Law explained the limited significance of this.

> Although this could raise concerns over the constitutional right to privacy, the reality is that most of the tax documents would still likely be protected from disclosure. This is because making the tax documents "a matter of public record" simply means the Public Records Act applies, instead of being exempted from it.[12]

In its lawsuit Vote Yes objected to this description of section 7.[13] It alleged that section 7 was intended not merely to make the filings a matter of public record, but also to make them not confidential.[14] Vote Yes asserted that "[i]f a document is a matter of public record, confidentiality restrictions do not apply."[15]

Vote Yes argued that the Department of Law's summary was the exact opposite of the true intention of the sponsors of the initiative. It demanded that the summary be corrected. Alternatively, if the ballot summary was not corrected to state that the producers' filings would be open to the public, then Vote

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11 Mills Letter at 6.

12 *Id.*

13 Complaint at 9-11, ¶¶ 26-31.

14 *Id.* at 9-10, ¶ 27.

15 *Id.* at 10, ¶ 27.

Yes proposed that the meaning of "a matter of public record" be litigated after the initiative passed. To that end Vote Fair proposed that the summary merely state that the filings would be "a matter of public record" without defining that term or making any reference to the Public Records Act.[16]

On 17 March 2020 Meyer certified the petition for the ballot. He provided a revised summary of the initiative. The language he used to explain the effect of section 7 differed from that of the Department of Law. But the gist of the explanation remained the same and continued to differ from that of the sponsors. Meyer explained:

> The act would also make all filings and supporting documents "a matter of public record." This would mean the normal Public Records Act process would apply.[17]

At a minimum this explanation rejects the sponsors' assertion that section 7 meant that the filings would always be available to the public. The explanation means that the statutory exceptions to disclosure of public records would remain available to deprive the public of access to the filings.[18]

The Court finds that the notice that Vote Yes gave of its objection to the first summary of section 7 provided the lieutenant governor and the

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16 *Id.* at 11, ¶ 31.

17 Vote Yes Memo., Exhibit D at 2.

18 *See* AS 40.25.120 (exceptions to disclosure of public records).

Department of Law with timely notice that Vote Yes would continue to object to any limitation on its desired full public disclosure of the producers' filings. By not merely objecting, but actually filing a lawsuit, Vote Yes signaled that it was willing to spend the resources to pursue its objections.

The content in the complaint of the objection to the first (petition) summary was sufficiently detailed to place all interested parties on notice that Vote Yes would not be satisfied by the lieutenant governor's assertion in the second (ballot) summary that the Public Records Act remained applicable. The ballot summary clearly meant that the lieutenant governor was rejecting Vote Yes's assertion that section 7 intended that all of the defined filings were not confidential. The assertion that the Public Records Act applied would mean the statutory exceptions to disclosure could be triggered. Vote Yes clearly voiced its objections to any restriction on public access to the filings.

Presumably the short time period for the filing of a lawsuit was intended, in part, to enable all interested parties to resolve issues about the adequacy of the ballot summary rapidly in order to meet practical timeline requirements for the preparation of election materials. The failure of Vote Yes to reassert its objection did not have any impact on the ability of the parties to obtain speedy judicial resolution of the objection. To the contrary, on 11 February 2020 the Court had issued a pretrial order. The parties had consulted by 26 February

2020 and were discussing procedural options.[19] On 16 April 2020 the Court set a status hearing for 22 April 2020. At that hearing the Court set a briefing schedule and set oral argument on the two motions for summary judgment for 26 May 2020. Thus there was no delay caused by the 3 day period between 17 April when the lawsuit would have been required in response to the second summary issued on 17 March 2020 and 20 April 2020 when counsel for the parties spoke and Vote Yes confirmed it was pursuing the lawsuit.

Nor was there any substantive change in the position that Alaska Yes took after learning of the ballot summary from the position it had articulated in the complaint. The lieutenant governor suffered no prejudice by any delay. At oral argument counsel for the lieutenant governor acknowledged that if Alaska Yes had merely said (before 17 April 2020) that it still objected to the second summary of section 7 for the same reasons stated before, that would have been adequate notice.

Given the chronology of the interactions of Alaska Yes, the lieutenant governor, and the Department of Law, the defendants had sufficient and timely notice of the continuing objections to section 7. The notice of the objections contained in the complaint was adequate notice even though the ballot summary had not yet been issued. There was insufficient (if any) substantive change between the two summaries to necessitate a new notice or any amendment to the complaint. The defendants also understood on 17 April 2020 that Alaska Yes had

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[19] Notice on Meet and Confer (26 February 2020).

not dropped its lawsuit and thus had to understand that Vote Yes was pursuing the objections previously articulated.

Thus the Court finds that there was satisfactory and timely notice to the defendants. The request to grant summary judgment on behalf of the defendants on that basis is DENIED.

Impartiality of the Summary.

After certification of the application of an initiative, the lieutenant governor is required to provide a summary of its subject matter.[20] If the petition is "properly filed," the lieutenant governor is to prepare "a ballot title and proposition."[21] The proposition is to be "a true and impartial summary of the proposed law."[22]

The Alaska Supreme Court addressed the criteria for ballot summaries and the role of a reviewing court in *Planned Parenthood of Alaska v. Campbell*.[23] It explained:

> Although we hold petition summaries and ballot summaries to the same standards for accuracy and impartiality, there are important differences between the functions served by initiative petition summaries and ballot summaries. ... "[T]he basic purpose of

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20 Alaska Const. Article XI. Section 3.

21 AS 15.45.180(a).

22 *Id.*

23 232 P.3d 725 (Alaska 2010).

> the ballot summary," on the other hand, "is to enable voters to reach informed and intelligent decisions on how to cast their ballots—decisions free from any partisan suasion."[24]

The trial court is to "give deference to the lieutenant governor's summary itself; in reviewing the adequacy of a lieutenant governor's ballot summary [the trial court should] apply a deferential standard of review."[25]

This Court's evaluation of Meyer's ballot summary is also informed by the prudential preference to withhold interpreting the substantive content of the initiative unless and until it is has been approved by the electorate. Thus

> when initiative petitions meet formal requirements for filing, the laws they propose to adopt are ordinarily not subject to immediate challenge: "The general rule is that a court should not determine the constitutionality of an initiative unless and until it is enacted." The rule against pre-election review is a prudential one, steeped in traditional policies recognizing the need to avoid unnecessary litigation, to uphold the people's right to initiate laws directly, and to check the power of individual officials to keep the electorate's voice from being heard.[26]

The parties dispute the meaning of the phrase "a matter of public record" as contained in section 7. Vote Yes argues the intent is to give the public

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[24] *Id.* at 729-30 (footnote omitted) (quoting *Alaskans for Efficient Government, Inc. v. State*, 52 P.3d 732, 735 (Alaska 2002) (quoting *Burgess v. Alaska Lieutenant Governor*, 654 P.2d 273, 275 (Alaska 1962).

[25] *Id.* at 729 (footnote and quotation marks omitted) (quoting *Alaskans for Efficient Government*, 52 P.3d at 735) (quoting *Burgess*, 654 P.2d at 276).

[26] *Alaskans for Efficient Government, Inc. v. State*, 153 P.3d 296, 298 (Alaska 2007) (quoting *State v. Trust the People*, 113 P.3d 613, 614 n. 1 (Alaska 2005) (footnote omitted).

access to documents filed by the producers that will enable the public to better understand the financial condition of the producers and the impact of tax policies. It argues that the phrase has meant that documents and information that are "a matter of public record) are, by definition, not confidential. Vote Yes points to three examples of the use of that phrase in Alaskan statutes.[27]

The Alaska Surface Coal Mining Control and Reclamation Act[28] governs various aspects of coal mining. Entities that seek to engage in coal mining must obtain a permit from the commissioner of natural resources.[29] The public's access to the information contained in an application for a permit is addressed in AS 27.21.110. Some information is available to the pubic; other information is confidential. The distinction between the two types if information is provided in subsection (c)(1). It provides:

> (c) Information
>
> (1) gathered from the proposed permit area included in the application for a permit and pertaining to coal seams, test borings, core samplings, or soil samples must be made available to any person with an interest that is or may be adversely affected, except

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[27] Vote Yes also points to examples of that usage in cases from other jurisdictions. *See* Opposition to Defendants' Motion for Summary Judgment (15 May 2020) at 8, n. 15.

[28] AS 27.21.010-27.21.999.

[29] AS 27.21.060.

> that information that relates only to the analysis of the chemical and physical properties of the coal, other than information regarding the mineral or elemental content that is potentially toxic in the environment, must be kept confidential *and not made a matter of public record*[.][30]

Entities seeking financing from the Alaska Industrial Development and Export Authority must provide it with a wide variety of information. Some, but not all of the information supplied is confidential. AS 44.85.215 draws that distinction.

> a) In order to promote the purposes of this chapter, unless the records or information were *a matter of public record* before submittal to the authority, the following records and information shall be kept confidential if the person supplying the records or information or the project, bond, loan, or guarantee applicant or borrower requests confidentiality and makes an adequate showing to the executive director of the authority that the records or information are [listing (1) – (8).][31]

A third example of the use of the phrase "a matter of public record" is found in AS 39.90.010(a). It provides: "(a) A public employee may not be dismissed, demoted, suspended, laid off, or otherwise made subject to any disciplinary action for communicating *matters of public record* or information under AS 40.25.110 and 40.25.120."[32]

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30 Italics supplied.

31 Italics supplied.

32 Italics supplied.

In each of these examples confidential information is contrasted with information that is a "matter of public record." The Court agrees with Vote Yes that the phrase "a matter of public interest" is often used as shorthand to mean information or documents are not be kept confidential but will be available for public inspection.

Meyer points to a more nuanced use of the term in the statute that addressed public records in general[33] and tax records in particular. AS 40.25.100(a) provides, in part:

> (a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person, including information under AS 38.05.020(b)(11) that is subject to a confidentiality agreement under AS 38.05.020(b)(12), is *not a matter of public record*, except as provided in AS 43.05.230(i)--(*l*) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405--43.05.499, or court proceeding.[34]

This statute is another example of the contrast between "A matter of public record" and confidentiality. Vote Yes contends that section 7 would negate this provision for documents and information provided by producers subject to the initiative. They would no longer be confidential.

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33 *See* AS 40.25.100-40.25.350.

34 Italics supplied. *See also* 43.05.230 (prohibiting state employees from disclosing tax records).

Meyer, however, contends that while the producers' information would now be "a matter of public record," and thus presumptively available to the public,[35] the producers could still assert statutory exceptions to public access and thus records would remain confidential.[36] Not all information or documents that are public records are available to the public.

The Court is not authorized to resolve this dispute over the meaning of section 7. While it is true that this dispute is not about the constitutionality of the initiative, and thus the prohibition described in *Alaskans for Efficient Government* is not triggered, the preference against construing the meaning of an initiative until and unless it is approved by the electorate remains.

What the Court is required to do at this stage is to determine whether Meyer's ballot summary is "a true and impartial summary of the proposed law,"[37] "free from any partisan suasion."[38]

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35 AS 40.25.110(a) provides, in part: "(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours."

36 AS 40.25.120 (listing 18 categorical exceptions to public access to public records).

37 AS 15.45.180(a).

38 *Planned Parenthood of Alaska,* 232 P.3d at 729-30 (footnote omitted) (quoting *Alaskans for Efficient Government, Inc. v. State*, 52 P.3d 732, 735 (Alaska 2002) (quoting *Burgess v. Alaska Lieutenant Governor*, 654 P.2d 273, 275 (Alaska 1962).

By telling the public that section 7 would not only make all filings and supporting documents "a matter of public record," but also that "[t]his would mean the normal Public Records Act process would apply[,]"[39] Meyer weighs in on the dispute over the meaning of section 7. He does not reveal that there is a dispute over the meaning of "a matter of public record." He does not indicate that it is unclear whether the exceptions to disclosure of public records, contained in AS 40.25.120, might apply to some of the producers' filings. Instead, he places his finger on the scales and affirmatively states that section 7 does not mean or accomplish what its sponsors say was their intent or would be the effect of the initiative.

This affirmative resolution of the dispute over its meaning is not an impartial summary of section 7. By siding with the possibility of confidentiality Meyer has engaged in partisan suasion. That is improper.

Meyer argues that the simple statement that 'the normal Public Records Act process would apply" does no more than inform the public how to go about gaining access to the filings. He seems to argue that he has not expressly taken a position on whether any of the filings can remain confidential. That cuts too fine a distinction. Vote Yes is not disputing the logistics of how a member of the public would seek access to documents. There was no disagreement about to what state agency should a member of the public send her request. The dispute is

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[39] Vote Yes Memo., Exhibit D at 2.

over whether the filings would always be accessible to the public, as Vote Yes contends, or whether some filings would remain confidential, as the Department of Law initially advised.

The initiative never mentions that Public Records Act. The most impartial resolution of the meaning of section 7 and the impact it would have on public access to the producers' filings is to say nothing about the Public Records Act. Let the public decide whether it favors what Vote Yes claims its initiative is intended to achieve. Vote Yes wants more transparency in the State's taxation regime as it applies to producers covered by the initiative. If the initiative passes, then the disputes about what the language of the initiative actually accomplishes can be litigated. For now the most important goal is to allow Vote Yes to present its vision of taxation and transparency to the voters. It may be that the initiative's language is not sufficiently precise to achieve all of the sponsors' intended results. But the voters should be permitted to voice their opinions of the sponsors' intentions without Meyer opining that the initiative does not achieve to the level of transparency that the sponsors' seek through section 7. While the Court is to grant deference to Meyer's ballot summary, it should not do that if deference would result in a summary that is not impartial.

Plaintiff shall delete from the ballot summary the sentence "This would mean the normal Public Records Act process would apply."

Plaintiff's Motion for Summary Judgment is GRANTED.

Defendants' Motion for Summary Judgment is DENIED.

DONE this 8th day of June 2020, at Anchorage, Alaska.

William F. Morse
Superior Court Judge

I certify that on 9 June 2020
a copy of the above was emailed to
the following:

R. Brena
C. Mills

Ellen Bozzini
Judicial Assistant